



Judiciary Committee

**Wednesday, March 22, 2006
10:15 A.M. – 12:00 P.M.
Morris Hall
(17 HOB)**

Committee Action Packet

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

Attendance:

| | <i>Present</i> | <i>Absent</i> | <i>Excused</i> |
|-----------------------|----------------|---------------|----------------|
| David Simmons (Chair) | X | | |
| Kevin Ambler | X | | |
| Dennis Baxley | X | | |
| Frederick Brummer | X | | |
| Anitere Flores | X | | |
| Dan Gelber | X | | |
| Michael Grant | X | | |
| Jeffrey Kottkamp | X | | |
| Sheri McInvale | X | | |
| Joe Pickens | X | | |
| Juan-Carlos Planas | X | | |
| Curtis Richardson | X | | |
| Dennis Ross | X | | |
| John Seiler | X | | |
| Totals: | 14 | 0 | 0 |

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

HB 129 : Lawful Ownership, Possession, and Use of Firearms and Other Weapons

☒ *Not Considered*

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.22-790.24.+

2. Vagrants and other undesirable persons as defined in s. 856.02.+

3. A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.+

(b) Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty.+

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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50 (c) Persons carrying out or training for emergency
51 management duties under chapter 252.+

52 (d) Sheriffs, marshals, prison or jail wardens, police
53 officers, Florida highway patrol officers, game wardens, revenue
54 officers, forest officials, special officers appointed under the
55 provisions of chapter 354, and other peace and law enforcement
56 officers and their deputies and assistants and full-time paid
57 peace officers of other states and of the Federal Government who
58 are carrying out official duties while in this state.+

59 (e) Officers or employees of the state or United States
60 duly authorized to carry a concealed weapon.+

61 (f) Guards or messengers of common carriers, express
62 companies, armored car carriers, mail carriers, banks, and other
63 financial institutions, while actually employed in and about the
64 shipment, transportation, or delivery of any money, treasure,
65 bullion, bonds, or other thing of value within this state.+

66 (g) Regularly enrolled members of any organization duly
67 authorized to purchase or receive weapons from the United States
68 or from this state, or regularly enrolled members of clubs
69 organized for target, skeet, or trap shooting, while at or going
70 to or from shooting practice; or regularly enrolled members of
71 clubs organized for modern or antique firearms collecting, while
72 such members are at or going to or from their collectors' gun
73 shows, conventions, or exhibits.+

74 (h) A person engaged in fishing, camping, or lawful
75 hunting or going to or returning from a fishing, camping, or
76 lawful hunting expedition.+

77 (i) A person engaged in the business of manufacturing,
78 repairing, or dealing in firearms, or the agent or

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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representative of any such person while engaged in the lawful course of such business.†

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.†

(k) A person firing weapons in a safe and secure indoor range for testing and target practice.†

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.†

(m) A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.†

(n) A person possessing arms at his or her home or place of business.†

(o) Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided such investigators:

1. Are employed full time;
2. Meet the official training standards for firearms established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(5) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and
3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

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(p) Investigators employed by the capital collateral representative, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms as established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(1) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the capital collateral representative and filed with the clerk of the circuit court in the county in which the investigator is headquartered.

(4) CONSTRUCTION.--This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein

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138 contained shall be construed to authorize the carrying of a
139 concealed firearm or other weapon on the person. This subsection
140 shall be liberally construed in favor of the lawful use,
141 ownership, and possession of firearms and other weapons,
142 including lawful self-defense as provided in s. 776.012.

143 (6) STORAGE AND TRANSPORT OF FIREARMS LOCKED INSIDE OR
144 LOCKED TO A MOTOR VEHICLE IN A PARKING AREA; PENALTY; IMMUNITY
145 FROM LIABILITY.--

146 (a) As used in this subsection, the term:

147 1. "motor vehicle" means any automobile, truck, minivan,
148 sports utility vehicle, motorcycle, motor scooter, or any other
149 similar vehicle required to be registered under Florida law.

150 2. "employee" means any person who works for salary,
151 wages, or other remuneration; is an independent contractor; or
152 is a volunteer, intern, or other similar individual for an
153 employer.

154 3. "employer" means any business that is a sole
155 proprietorship, partnership, corporation, limited liability
156 company, professional association, cooperative, joint venture,
157 trust, firm, institution, or association, with employees.

158 4. "invitee" means any business invitee, including a
159 customer or visitor lawfully on the premises.

160 (b) Except as provided in paragraph (e), no employer, or
161 landlord of an employer, shall establish, maintain, or enforce
162 any policy or rule that prohibits or has the effect of
163 prohibiting an employee or invitee in lawful possession of a
164 firearm from parking a motor vehicle on any property used for
165 that purpose when the employee or invitee is lawfully in such
166 area and the firearm is actually locked inside or locked to the
167 motor vehicle, unless, at its own election, the employer, or

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landlord of the employer, provides the employee or invitee with the opportunity to:

1. check, store, or secure the firearm of the employee or invitee subject to reasonable conditions; or

2. park in an onsite area set aside by the employer, or landlord of the employer, for parking motor vehicles with a firearm locked inside or locked to the motor vehicle. In the event the employer, or landlord of the employer, elects to provide such onsite area, it shall be as convenient as other employee or invitee parking and shall not be marked or posted as a special parking area for such purposes; or

3. notify the employer, or landlord of the employer, or their designee, that the employee or invitee intends, from time to time, to be in lawful possession of a firearm locked inside or locked to a motor vehicle.

(c)1. No employer, or landlord of an employer, or employee imposing or implementing a policy under paragraph (b), shall be liable in any civil or other action for any harm that arises out of, or results from, directly or indirectly, the use or threatened use of a firearm that was being transported and stored by an employee or invitee and was locked inside of or locked to a motor vehicle on any property owned or leased by an employer, or landlord of an employer, and used for parking motor vehicles. The immunity provided in this sub-paragraph extends to the vicarious liability of an employer or landlord of an employer that arises out of, or results from, directly or indirectly, the use or threatened use of a firearm that was being transported and stored by an employee or invitee and was locked inside of or locked to a motor vehicle on any property owned or leased by an employer, or landlord of an employer, and

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Amendment No. 1

198 used for parking motor vehicles. The immunity provided in this
199 sub-paragraph shall not apply to any person who uses or
200 threatens to use a firearm or other weapon. The immunity
201 provided in this sub-paragraph shall not apply if the harm
202 involved was caused, in whole or in part, by the willful or
203 criminal misconduct of the employer, or landlord of the
204 employer, or a conscious and flagrant indifference to the safety
205 of the person or persons harmed.

206 2. A civil fine of \$10,000, per aggrieved employee or
207 invitee, shall be imposed for each violation of the prohibition
208 in paragraph (b).

209 (d) It is the intent of this subsection to reinforce and
210 protect the right of each law-abiding employee or invitee to
211 enter and exit any property owned or leased by an employer, or
212 landlord of an employer, and used for parking motor vehicles
213 while the employee or invitee is lawfully transporting and
214 storing a firearm in the motor vehicle and the firearm is locked
215 inside or locked to the motor vehicle, to avail himself or
216 herself of temporary or long-term parking or storage of a motor
217 vehicle, and to prohibit any infringement of the right to lawful
218 possession of the firearm when the firearm is being transported
219 and stored inside or locked to a motor vehicle for a lawful
220 purpose.

221 (e) The prohibition in paragraph (b) does not apply to:

222 1. property owned or leased by an employer, or landlord of
223 an employer, upon which are conducted activities involving
224 national defense, aerospace, or domestic security.

225 2. property owned or leased by an employer, or landlord of
226 an employer, upon which a significant portion of the business
227 conducted on such property involves the manufacture, use,

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storage, sale, or transportation of hazardous or ultra-hazardous materials regulated under state or federal law, including combustible or explosive materials.

3. a motor vehicle owned, leased, or rented by an employer, or landlord of an employer, or its agent.

4. any other property owned or leased by an employer, or landlord of an employer, where an employee or invitee is prohibited from having a firearm pursuant to any federal law or any existing state general law on the effective date of this act.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to lawful ownership, possession, and use of firearms; amending s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons; providing definitions; prohibiting specified employers and landlords of employers in certain circumstances from establishing, maintaining, or enforcing any policy or rule that prohibits certain employees and invitees from parking a motor vehicle on property set aside for such purpose when a secured firearm is being lawfully transported and stored in the motor vehicle; providing for specified immunity from liability; providing a civil penalty; providing intent; providing exceptions; providing an effective date.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES
Amendment No. 1A

Bill No. HB 129

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT ☒ (Y/N) (5/7)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary
Representative Kottkamp offered the following:

**Amendment to Amendment #1 by Representatives Simmons and
Baxley**

Remove lines 167-198 and insert:

motor vehicle.

(c)1. No employer, or landlord of an employer, or employee
imposing or implementing a policy under paragraph (b), shall be
liable for any harm that arises out of, or results from, the use
of a firearm that was being transported and stored by an
employee or invitee and was locked inside of or locked to a
motor vehicle on any property owned or leased by an employer, or
landlord of an employer, and used for parking motor vehicles.
The immunity provided in this

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

21 (c) These rights are not abrogated by virtue of a
22 citizen's becoming a customer, employee, or invitee of a
23 business entity.

24 (3) LEGISLATIVE FINDINGS.--The Legislature finds that
25 citizens' lawful possession, transportation, and secure keeping
26 of certain private property within their motor vehicles is
27 essential to the exercise of fundamental constitutional rights,
28 including freedom of speech, freedom of association, the free
29 exercise of religion, and to keep and bear arms. The Legislature
30 finds that there is a compelling state interest to protect the
31 fundamental private property rights of the citizens of Florida.
32 The Legislature further finds that a citizen is not required and
33 should not be required to waive or abrogate his or her right to
34 possess and securely keep such constitutionally protected
35 private property locked within his or her motor vehicle by
36 virtue of becoming a customer, employee, or invitee of an
37 employer or a business establishment within the state.

38 (4) DEFINITIONS.--As used in this section, the term:

39 (a) "Aggrieved person" means any customer, employee, or
40 invitee as defined in this subsection.

41 (b) "Employee" means a person who works for salary, wages,
42 or other remuneration; is an independent contractor; or is a
43 volunteer, intern, or other similar individual for an employer.

44 (c) "Employer" means a business that is a sole
45 proprietorship, partnership, corporation, limited liability
46 company, professional association, cooperative, joint venture,
47 trust, firm, institution, association, or public-sector entity,
48 which has employees.

49 (d) "Invitee" means any business invitee, including a
50 customer or visitor, who is lawfully on the premises.

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Amendment No. 2

51 (e) "Motor vehicle" means any automobile, truck minivan,
52 sports utility vehicle, motor home, recreational vehicle,
53 motorcycle, or motor scooter, or any other vehicle, which is
54 operated on the roads of this state and is required to be
55 registered under Florida law.

56 (f) "Parking lot" means any property that is owned or
57 leased by an employer, or a landlord of an employer, and used
58 for parking motor vehicles and that is available to customers,
59 employees, or invitees for temporary or long-term parking or
60 storage of motor vehicles.

61 (5) PROHIBITED ACTS.--A public or private entity may not
62 violate the constitutional rights of any customer, employee, or
63 invitee as provided in this subsection:

64 (a) A public or private entity may not prohibit any
65 customer, employee or invitee from possessing any lawfully held
66 personal property if such property is locked inside or to a
67 private motor vehicle in a parking lot when the customer,
68 employee, or invitee is lawfully in such area.

69 (b) A public or private entity may not violate the privacy
70 rights of a customer, employee, or invitee by verbal inquiry or
71 actual search of a private motor vehicle in a parking lot. A
72 search of a private motor vehicle may be conducted only by on
73 duty law enforcement personnel and must comply with the due
74 process requirements of the Constitution of the State of Florida
75 and the United States Constitution.

76 (c) An employer may not condition employment upon
77 preventing or prohibiting, or otherwise attempt to prevent or
78 prohibit, any customer, employee, or invitee from keeping locked
79 within the trunk, glove box, other enclosed compartment, or area
80 out of sight within a motor vehicle any property or material the
81 lawful possession of which is protected by, or the lawful use of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

82 which is incidental to, the exercise of individual rights
83 protected under the United States Constitution and the State
84 Constitution.

85 (d) An employer may not terminate the employment of or
86 otherwise discriminate against an employee, or expel a customer
87 or invitee, for exercising his or her constitutional right to
88 keep and bear arms or the right of self-defense as long as a
89 firearm is never exhibited on company property except for lawful
90 defensive purposes.

91
92 This section applies to all public-sector employers, including
93 those that are already prohibited from regulating firearms under
94 s. 790.33.

95 (6) IMMUNITY FROM LEGAL LIABILITY.--An employer or a
96 landlord of an employer is not liable in a civil action that
97 arises, directly or indirectly, out of or results from the theft
98 of or the threatened use or accidental or criminal use of a
99 firearm or any other legal property that was stored in the
100 private motor vehicle by a customer, employee, or invitee in a
101 parking lot owned or leased by an employer or the landlord of an
102 employer. The immunity provided in this subsection does not
103 apply to a person who uses or threatens to use a firearm or
104 other weapon in a criminal act. The immunity provided in this
105 subsection does not apply if the harm involved was caused, in
106 whole or in part, by the willful or criminal misconduct of the
107 employer or the landlord of the employer.

108 (7) ENFORCEMENT.--The Attorney General shall enforce the
109 protections of this act on behalf of an aggrieved person if
110 there is reasonable cause to believe that the customer,
111 employee, or invitee's rights under this act have been violated
112 by a public or private entity and shall commence a civil or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

administrative action for damages, injunctive relief, or civil penalties, and such other relief as may be appropriate under the laws of this state pursuant to s. 760.51, or may negotiate a settlement with an employer on behalf of an aggrieved person.

(8) The prohibitions in subsection (5) do not apply to:

(a) Property owned or leased by an employer, or the landlord of an employer, upon which are conducted substantial activities involving national defense, aerospace, or domestic security if the presence of such private property in a parking lot presents an increased danger of explosion or reasonably predictable catastrophic event.

(b) Property owned or leased by an employer, or the landlord of an employer, upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law if the presence of such products in a parking lot presents an increased danger of explosion or reasonably predictable catastrophic event.

(c) A motor vehicle owned, leased, or rented by an employer, or the landlord of an employer, or its agent.

(d) Any other property owned or leased by an employer, or the landlord of an employer, if a customer, employee, or invitee is prohibited from having a firearm or other legal product pursuant to any federal law or any general law of this state existing on the effective date of this act.

(e) Any school property as defined and regulated under s. 790.115.

(f) Any prison-facility grounds as defined and regulated under s. 944.47.

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Amendment No. 2

142 (g) Uses of firearms and other weapons which are
143 prohibited under s. 790.25(2). The restrictions provided in that
144 subsection are not affected by this section.

145 Section 2. This act shall take effect upon becoming a law
146 and shall apply to causes of action that accrue on or after that
147 date.

148
149 ===== T I T L E A M E N D M E N T =====

150 Remove the entire title and insert:

151 An act relating to the protection of constitutional rights;
152 creating s. 790.251, F.S.; creating the "Individual Personal
153 Private Property Protection Act"; providing legislative intent
154 and legislative findings; defining terms; prohibiting a public
155 or private entity from violating the constitutional rights of a
156 customer, employee, or invitee by prohibiting or otherwise
157 deterring that person from having certain lawful items locked in
158 or to the person's private motor vehicle while it is in a
159 parking lot or by discouraging exercise of the right to keep and
160 bear arms; providing immunity from legal liability to an
161 employer or landlord of an employer for certain acts arising out
162 of another person's storing legal property in a private motor
163 vehicle parked on the employer's or landlord's property;
164 requiring the Attorney General to enforce this section on behalf
165 of an aggrieved person; providing exceptions to the prohibitions
166 imposed by the act; providing an effective date.

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

HB 709 : Court Costs for Drug Court Programs

☒ Favorable

| | Yea | Nay | No Vote | Absentee Yea | Absentee Nay |
|-----------------------|-----|---------------|---------|-----------------|-----------------|
| Kevin Ambler | X | | | | |
| Dennis Baxley | X | | | | |
| Frederick Brummer | X | | | | |
| Anitere Flores | X | | | | |
| Dan Gelber | X | | | | |
| Michael Grant | X | | | | |
| Jeffrey Kottkamp | X | | | | |
| Sheri McInvale | X | | | | |
| Joe Pickens | | | X | | |
| Juan-Carlos Planas | X | | | | |
| Curtis Richardson | X | | | | |
| Dennis Ross | | | | X | |
| John Seiler | X | | | | |
| David Simmons (Chair) | X | | | | |
| Total Yeas: 12 | | Total Nays: 0 | | | |

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

HB 839 CS : Homeowners' Associations

☒ Favorable With Committee Substitute

| | Yea | Nay | No Vote | Absentee Yea | Absentee Nay |
|-----------------------------------|-----|-----|---------|-----------------|-----------------|
| Kevin Ambler | X | | | | |
| Dennis Baxley | X | | | | |
| Frederick Brummer | X | | | | |
| Anitere Flores | X | | | | |
| Dan Gelber | X | | | | |
| Michael Grant | X | | | | |
| Jeffrey Kottkamp | X | | | | |
| Sheri McInvale | X | | | | |
| Joe Pickens | | | X | | |
| Juan-Carlos Planas | X | | | | |
| Curtis Richardson | X | | | | |
| Dennis Ross | X | | | | |
| John Seiler | | | X | | |
| David Simmons (Chair) | X | | | | |
| Total Yeas: 12 Total Nays: 0 | | | | | |

HB 839 CS Amendments

Amendment 1

☒ Adopted Without Objection

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 839 CS**

COUNCIL/COMMITTEE ACTION

| | |
|-----------------------|---|
| ADOPTED | <input type="checkbox"/> (Y/N) |
| ADOPTED AS AMENDED | <input type="checkbox"/> (Y/N) |
| ADOPTED W/O OBJECTION | <input checked="" type="checkbox"/> (Y/N) |
| FAILED TO ADOPT | <input type="checkbox"/> (Y/N) |
| WITHDRAWN | <input type="checkbox"/> (Y/N) |
| OTHER | <input type="checkbox"/> |

Council/Committee hearing bill: Judiciary

Representative Kottkamp offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 720.3035 is created to read as follows:

720.3035 Architectural Control Covenants; Parcel Owner
Improvements; Rights and Privileges.-

(1) The authority of an association or any committee of an
association to review and approve plans and specifications for
the location, size, type or appearance of any structure or other
improvement on a parcel, or to enforce standards for the
external appearance of any structure or improvement located on a
parcel, shall only be authorized and permitted to the extent
that the authority is specifically stated or reasonably inferred
as to such location, size, type or appearance in the declaration
of covenants.

(2) If the declaration of covenants provides options for
the use of material, the size of the structure or improvement,
the design of the structure or improvement, or the location of
the structure or improvement on the parcel, the association nor

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any committee of the association shall restrict the right of a parcel owner to select from the options provided in the declaration of covenants.

(3) For the purpose of establishing setback lines that are specifically stated in the declaration of covenants, each parcel shall be deemed to have only one front for purposes of determining the required front setback even if the parcel shall be bounded by a roadway or other easement on more than one side. When the declaration of covenants does not provide for specific setback lines, the applicable county or municipal setback lines shall apply, and neither the association nor any committee of the association shall enforce or attempt to enforce any setback line that is inconsistent with the applicable county or municipal standard or standards.

(4) Each parcel owner shall be entitled to the rights and privileges set forth in the declaration of covenants concerning the use of the parcel, and the construction of permitted structures and improvements on the parcel and such rights and privileges shall not be unreasonably infringed upon or impaired by the association or any committee of the association. In the event that the association or any committee of the association shall infringe upon or impair the rights and privileges set forth in the declaration of covenants, the adversely affected parcel owner shall be entitled to recover damages caused by such infringement or impairment, including any costs and reasonable attorney's fees incurred in preserving or restoring the rights and privileges of the parcel owner set forth in the declaration of covenants.

(5) Neither the association nor any committee of the association shall enforce any policy or restriction that is

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inconsistent with the rights and privileges of a parcel owner set forth in the declaration of covenants, whether uniformly applied or not. Neither the association nor any committee of the association may rely upon a policy or restriction that is inconsistent with the declaration of covenants, whether uniformly applied or not, in defense of any action taken in the name of or on behalf of the association against a parcel owner.

Section 2. Subsections (6) and (7) of section 720.303, Florida Statutes, are amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.--

(6) BUDGETS.--

(a) The association shall prepare an annual budget that sets out the annual operating expenses. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges paid for by the association for recreational amenities, whether owned by the association, the developer, or another person. The association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The copy must be provided to the member within the time limits set forth in subsection (5).

(b) In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible to the extent that the governing documents do not limit increases in assessments, including reserves. If the budget of the

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82 association includes reserve accounts, such reserves shall be
83 determined, maintained, and waived in the manner provided in
84 this subsection. Once an association provides for reserve
85 accounts in the budget, the association shall thereafter
86 determine, maintain and waive reserves in compliance with the
87 provisions of this subsection.

88 (c) If the budget of the association does not provide for
89 reserve accounts governed by this subsection and the association
90 is responsible for the repair and maintenance of capital
91 improvements that may result in a special assessments if
92 reserves are not provided, each financial report for the
93 preceding fiscal year required by subsection (7) shall contain
94 the following statement in conspicuous type: THE BUDGET OF THE
95 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
96 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL
97 ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
98 PURSUANT TO THE PROVISIONS OF SECTION 720.303(6) UPON THE
99 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
100 INTERESTS OF THE ASSOCIATION.

101 (d) An association shall be deemed to have provided for
102 reserve accounts when reserve accounts have been initially
103 established by the developer or when the membership of the
104 association affirmatively elects to provide for reserves. If
105 reserve accounts are not initially provided for by the
106 developer, the membership of the association may elect to do so
107 upon the affirmative approval of not less than a majority of the
108 total voting interests of the association. Such approval may be
109 attained by vote of the members at a duly called meeting of the
110 membership or upon a written consent executed by not less than a
111 majority of the total voting interests in the community. The

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

112 approval action of the membership shall state that reserve
113 accounts shall be provided for in the budget and the approval
114 action of the membership shall designate the components for
115 which the reserve accounts are to be established. Upon approval
116 by the membership, the board of directors shall provide for the
117 required reserve accounts for inclusion in the budget in the
118 next fiscal year following the approval and in each year
119 thereafter. Once established as herein provided, the reserve
120 accounts shall be funded, maintained or funding waived in the
121 manner hereinafter provided.

122 (e) The amount to be reserved in any account established
123 shall be computed by means of a formula which is based upon
124 estimated remaining useful life and estimated replacement cost
125 or deferred maintenance expense of each reserve item. The
126 association may adjust replacement reserve assessments annually
127 to take into account any changes in estimates of cost or useful
128 life of a reserve item.

129 (f) Once a reserve account or reserve accounts are
130 established, the membership of the association upon a majority
131 vote at a meeting at which a quorum is present may provide for
132 no reserves or less reserves than required by this section. If a
133 meeting of the unit owners has been called to determine whether
134 to waive or reduce the funding of reserves, and no such result
135 is achieved or a quorum is not attained, the reserves as
136 included in the budget shall go into effect. After the turnover,
137 the developer may vote its voting interest to waive or reduce
138 the funding of reserves. Any vote taken pursuant to this
139 subsection to waive or reduce reserves shall be applicable only
140 to one budget year.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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141 (g) Funding formulas for reserves authorized by this
142 section shall be based on either a separate analysis of each of
143 the required assets or a pooled analysis of two or more of the
144 required assets.

145 1. If the association maintains separate reserve accounts
146 for each of the required assets, the amount of the contribution
147 to each reserve account shall be the sum of the following two
148 calculations:

149 a. The total amount necessary, if any, to bring a negative
150 component balance to zero; and

151 b. The total estimated deferred maintenance expense or
152 estimated replacement cost of the reserve component less the
153 estimated balance of the reserve component as of the beginning
154 of the period for which the budget will be in effect. The
155 remainder, if greater than zero, shall be divided by the
156 estimated remaining useful life of the component. The formula
157 may be adjusted each year for changes in estimates and deferred
158 maintenance performed during the year and may include factors
159 such as inflation and earnings on invested funds.

160 2. If the association maintains a pooled account of two or
161 more of the required reserve assets, the amount of the
162 contribution to the pooled reserve account as disclosed on the
163 proposed budget shall not be less than that required to ensure
164 that the balance on hand at the beginning of the period for
165 which the budget will go into effect plus the projected annual
166 cash inflows over the remaining estimated useful life of all of
167 the assets that make up the reserve pool are equal to or greater
168 than the projected annual cash outflows over the remaining
169 estimated useful lives of all of the assets that make up the
170 reserve pool, based on the current reserve analysis. The

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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171 projected annual cash inflows may include estimated earnings
172 from investment of principal. The reserve funding formula shall
173 not include any type of balloon payments.

174 (h) Reserve funds and any interest accruing thereon shall
175 remain in the reserve account or accounts, and shall be used
176 only for authorized reserve expenditures unless their use for
177 other purposes is approved in advance by a majority vote at a
178 meeting at which a quorum is present. Prior to turnover of
179 control of an association by a developer to parcel owners, the
180 developer-controlled association shall not vote to use reserves
181 for purposes other than that for which they were intended
182 without the approval of a majority of all non-developer voting
183 interests, voting in person or by limited proxy at a duly called
184 meeting of the association.

185 (7) FINANCIAL REPORTING.--Within 90 days after the end of
186 the fiscal year, or annually on the date provided in the bylaws,
187 the association shall prepare and complete, or contract for the
188 preparation and completion of, a ~~an annual~~ financial report for
189 the preceding fiscal year. Within 21 ~~60~~ days after the final
190 financial report is completed by the association or received
191 from the third party, but not later than 120 days after the end
192 of the fiscal year or other date as provided in the bylaws,
193 ~~close of the fiscal year.~~ the association shall, within the time
194 limits set forth in subsection (5), provide each member with a
195 copy of the annual financial report or a written notice that a
196 copy of the financial report is available upon request at no
197 charge to the member. Financial reports shall be prepared as
198 follows:

199 (a) An association that meets the criteria of this
200 paragraph shall prepare or cause to be prepared a complete set

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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of financial statements in accordance with generally accepted accounting principles as adopted by the Board of Accountancy. The financial statements shall be based upon the association's total annual revenues, as follows:

1. An association with total annual revenues of \$100,000 or more, but less than \$200,000, shall prepare compiled financial statements.

2. An association with total annual revenues of at least \$200,000, but less than \$400,000, shall prepare reviewed financial statements.

3. An association with total annual revenues of \$400,000 or more shall prepare audited financial statements.

(b)1. An association with total annual revenues of less than \$100,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.

3. A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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(c) If 20 percent of the parcel owners petition the board for a level of financial reporting higher than that required by this section, the association shall duly notice and hold a meeting of members within 30 days of receipt of the petition for the purpose of voting on raising the level of reporting for that fiscal year. Upon approval of a majority of the total voting interests of the parcel owners, the association shall prepare or cause to be prepared, shall amend the budget or adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the governing documents, and shall provide within 90 days of the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements if the association is otherwise required to prepare reviewed financial statements.

(d) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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259 3. A report of cash receipts and expenditures, a compiled
260 financial statement, or a reviewed financial statement in lieu
261 of an audited financial statement.

262 Section 3. Paragraph (t) is added to subsection (3) of
263 section 720.307, Florida Statutes, to read:

264 720.307 Transition of association control in a
265 community.--With respect to homeowners' associations:

266 (3) At the time the members are entitled to elect at least
267 a majority of the board of directors of the homeowners'
268 association, the developer shall, at the developer's expense,
269 within no more than 90 days deliver the following documents to
270 the board:

271 (t) The financial records, including financial statements
272 of the association, and source documents from the incorporation
273 of the association through the date of turnover. The records
274 shall be audited by an independent certified public accountant
275 for the period from the incorporation of the association or from
276 the period covered by the last audit, if an audit has been
277 performed for each fiscal year since incorporation. All
278 financial statements shall be prepared in accordance with
279 generally accepted accounting principles and shall be audited in
280 accordance with generally accepted auditing standards, as
281 prescribed by the Board of Accountancy, pursuant to chapter 473.
282 The certified public accountant performing the audit shall
283 examine, to the extent necessary, supporting documents and
284 records, including the cash disbursements and related paid
285 invoices to determine whether expenditures were for association
286 purposes and the billings, cash receipts, and related records of
287 the association to determine that the developer was charged and
288 paid the proper amounts of assessments. This paragraph applies

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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to associations with a date of incorporation after December 31,
2006.

Section 4. Section 720.308, Florida Statutes, is amended
to read:

720.308 Assessments and charges.--

(1) ASSESSMENTS.--For any community created after October
1, 1995, the governing documents must describe the manner in
which expenses are shared and specify the member's proportional
share thereof. Assessments levied pursuant to the annual budget
or special assessment must be in the member's proportional share
of expenses as described in the governing document, which share
may be different among classes of parcels based upon the state
of development thereof, levels of services received by the
applicable members, or other relevant factors. While the
developer is in control of the homeowners' association, it may
be excused from payment of its share of the operating expenses
and assessments related to its parcels for any period of time
for which the developer has, in the declaration, obligated
itself to pay any operating expenses incurred that exceed the
assessments receivable from other members and other income of
the association. This section does not apply to an association,
no matter when created, if the association is created in a
community that is included in an effective development-of-
regional-impact development order as of the effective date of
this act, together with any approved modifications thereto.

(2) GUARANTEE OF COMMON EXPENSES.--

(a) Establishment of the guarantee.--If a guarantee of the
assessments of parcel owners is not included in the purchase
contracts or declaration, any agreement establishing a guarantee
shall be effective only upon the approval of a majority of the

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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319 voting interests of the members other than the developer.
320 Approval shall be expressed at a meeting of the members, voting
321 in person or by limited proxy; or by agreement in writing
322 without a meeting if provided in the bylaws. Such guarantee
323 shall meet the requirements of this section.

324 (b) Guarantee period.--The period of time for the
325 guarantee shall be indicated by a specific beginning and ending
326 date or event.

327 1. The ending date or event shall be the same for all of
328 the members of a homeowners' association, including members in
329 different phases of the development.

330 2. The guarantee may provide for different intervals of
331 time during a guarantee period with different dollar amounts for
332 each such interval.

333 3. The guarantee may provide that after the initial stated
334 period, the developer has an option to extend the guarantee for
335 one or more additional stated periods. The extension of a
336 guarantee is limited to extending the ending date or event;
337 therefore, the developer does not have the option of changing
338 the level of assessments guaranteed.

339 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
340 amount of the guarantee shall be an exact dollar amount for each
341 parcel identified in the declaration. Regardless of the stated
342 dollar amount of the guarantee, assessments charged to a member
343 shall not exceed the maximum obligation of the member based on
344 the total amount of the adopted budget and the member's
345 proportionate ownership share of the common elements.

346 (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The
347 cash payments required from the guarantor during the guarantee
348 period shall be determined as follows:

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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349 (a) If at any time during the guarantee period the funds
350 collected from member assessments at the guaranteed level and
351 other revenues collected by the association are not sufficient
352 to provide payment, on a timely basis, of all assessments,
353 including the full funding of the reserves unless properly
354 waived, the guarantor shall advance sufficient cash to the
355 association at the time such payments are due.

356 (b) Expenses incurred in the production of nonassessment
357 revenues, not in excess of the nonassessment revenues, shall not
358 be included in the assessments. If the expenses attributable to
359 nonassessment revenues exceed nonassessment revenues, only the
360 excess expenses must be funded by the guarantor. Interest earned
361 on the investment of association funds may be used to pay the
362 income tax expense incurred as a result of the investment, such
363 expense shall not be charged to the guarantor, and the net
364 investment income shall be retained by the association. Each
365 such nonassessment-revenue-generating activity shall be
366 considered separately. Any portion of the parcel assessment that
367 is budgeted for designated capital contributions of the
368 association shall not be used to pay operating expenses.

369 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
370 guarantor's total financial obligation to the association at the
371 end of the guarantee period shall be determined on the accrual
372 basis using the following formula:

373 (a) The guarantor will pay any deficits that exceed the
374 guaranteed amount; less

375 (b) The total regular periodic assessments earned by the
376 association from the members other than the guarantor during the
377 guarantee period regardless of whether the actual level charged
378 was less than the maximum guaranteed amount.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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(6) EXPENSES.--Expenses incurred in the production of nonassessment revenues, not in excess of the nonassessment revenues, shall not be included in the operating expenses. If the expenses attributable to nonassessment revenues exceed nonassessment revenues, only the excess expenses must be funded by the guarantor. Interest earned on the investment of association funds may be used to pay the income tax expense incurred as a result of the investment, such expense shall not be charged to the guarantor, and the net investment income shall be retained by the association. Each such nonassessment revenue-generating activity shall be considered separately. Any portion of the parcel assessment that is budgeted for designated capital contributions of the association shall not be used to pay operating expenses.

Section 5. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to homeowners' associations; creating s. 720.3035, F.S.; providing for architectural control covenants and parcel owner improvements; authorizing the review and approval of plans and specifications; providing limitations; providing rights and privileges for parcel owners as set forth in the declaration of covenants; amending s. 720.303, F.S.; requiring the budget to provide for annual operating expenses; requiring the budget to include reserve accounts for capital expenditures and deferred maintenance; providing the amount to be reserved; authorizing the association to adjust replacement reserve assessments annually; authorizing the developer to vote

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409 to waive the reserves or reduce the funding of reserves for a
410 certain period; revising provisions relating to financial
411 reporting; revising time periods in which the association must
412 complete its reporting; amending s. 720.307, F.S.; requiring
413 developers to deliver financial records to the board; requiring
414 certain information to be included in the records and for the
415 records to be prepared in a specified manner; amending s.
416 720.308, F.S.; providing that a guarantee of common expenses
417 shall be effective under certain circumstances; requiring the
418 guarantee to meet certain requirements; authorizing the
419 guarantee to provide certain requirements; requiring the stated
420 dollar amount of the guarantee to be an exact dollar amount for
421 each parcel identified in the declaration; providing payments
422 required from the guarantor to be determined in a certain
423 manner; providing a formula to determine the guarantor's total
424 financial obligation to the association; providing that certain
425 expenses incurred in the production of certain revenues shall
426 not be included in the common expenses; providing an effective
427 date.

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COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

HB 1049 CS : Driver's Licenses

☒ Favorable With Committee Substitute

| | Yea | Nay | No Vote | Absentee Yea | Absentee Nay |
|-----------------------|-----|---------------|---------|-----------------|-----------------|
| Kevin Ambler | X | | | | |
| Dennis Baxley | X | | | | |
| Frederick Brummer | X | | | | |
| Anitere Flores | X | | | | |
| Dan Gelber | | | X | | |
| Michael Grant | X | | | | |
| Jeffrey Kottkamp | | | X | | |
| Sheri McInvale | X | | | | |
| Joe Pickens | | | X | | |
| Juan-Carlos Planas | X | | | | |
| Curtis Richardson | X | | | | |
| Dennis Ross | X | | | | |
| John Seiler | | | X | | |
| David Simmons (Chair) | X | | | | |
| Total Yeas: 10 | | Total Nays: 0 | | | |

HB 1049 CS Amendments

Amendment 1

☒ Adopted Without Objection

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1049 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION ☒ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary
Representative Simmons offered the following:

Amendment

Remove line(s) 32 through 50 and insert:

2. In addition to any other penalty imposed for a violation of subparagraph 1., the court shall order the Department of Highway Safety and Motor Vehicles to withhold the issuance of, or suspend or revoke, the driver's license or driving privilege, as provided in s. 322.057, of any person other than a licensee under this chapter or an employee or agent of a licensee under this chapter.

Section 2. Section 322.057, Florida Statutes, is created to read:

322.057 Mandatory revocation or suspension of driver's license for certain persons who provide alcohol to persons under 21 years of age.--

(1) Notwithstanding s. 322.28, the court shall order the department to withhold the issuance of, or suspend or revoke, the driver's license of, a person 21 years of age or older,

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22 other than a licensee under chapter 561 or an employee or agent
23 of a licensee under Chapter 561, who is found guilty of a
24 violation of s. 562.11(1)(a), for not less than 3 months or more
25 than 6 months for a violation and 1 year for any subsequent
26 violation.
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COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

HB 7047 : Review under the Open Government Sunset Review Act regarding the Tobacco Settlement Agreement

☒ Favorable

| | Yea | Nay | No Vote | Absentee Yea | Absentee Nay |
|-----------------------|-----|---------------|---------|-----------------|-----------------|
| Kevin Ambler | X | | | | |
| Dennis Baxley | X | | | | |
| Frederick Brummer | X | | | | |
| Anitere Flores | X | | | | |
| Dan Gelber | X | | | | |
| Michael Grant | X | | | | |
| Jeffrey Kottkamp | X | | | | |
| Sheri McInvale | X | | | | |
| Joe Pickens | | | X | | |
| Juan-Carlos Planas | X | | | | |
| Curtis Richardson | X | | | | |
| Dennis Ross | X | | | | |
| John Seiler | | | X | | |
| David Simmons (Chair) | X | | | | |
| Total Yeas: 12 | | Total Nays: 0 | | | |

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

Other Business Appearance:

Workshop on offshore petroleum/natural gas activities

David Mica (Lobbyist) (At Request Of Chair) - Information Only

Florida Petroleum Council

215 S. Calhoun St.

Tallahassee FL 32312

Phone: 850-561-6300

Workshop on offshore petroleum/natural gas activities

Phil Wiczyski (State Employee) (At Request Of Chair) - Information Only

FDEP

3900 Commonwealth Blvd., 659

Tallahassee FL 32399

Phone: 850-245-2010

Workshop on offshore petroleum/natural gas activities

Lynn Griffin (State Employee) (At Request Of Chair) - Information Only

Florida Dept. Environment Protection

3900 Commonwealth Blvd., MS 47

Tallahassee FL 32399

Phone: 850-245-2163

Workshop on offshore petroleum/natural gas activities

Richard Charter (At Request Of Chair) - Information Only

Co-Chair, National OCS Coalition (via telephone)

Workshop on offshore petroleum/natural gas activities

Professor Wilton Sturges (At Request Of Chair) - Information Only

Dept. of Oceanography, Florida State University

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM

COMMITTEE MEETING REPORT

Judiciary Committee

3/22/2006 10:15:00AM

Location: Morris Hall (17 HOB)

Summary:

Judiciary Committee

Wednesday March 22, 2006 10:15 am

HB 129 Not Considered

HB 709 Favorable

Yeas: 12 Nays: 0

HB 839 CS Favorable With Committee Substitute

Yeas: 12 Nays: 0

Amendment 1 Adopted Without Objection

HB 1049 CS Favorable With Committee Substitute

Yeas: 10 Nays: 0

Amendment 1 Adopted Without Objection

HB 7047 Favorable

Yeas: 12 Nays: 0

Committee meeting was reported out: Wednesday, March 22, 2006 1:15:15PM